IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

WP(C).No. 30016 of 2003(W)

PETITIONER:

COCHIN DEVASWOM BOARD, THRISSUR,
REPRESENTED BY THE SECRETARY.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS:
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1. SUNITHI,
W/O. LATE PUNNAKKAPARAMBIL RADHAKRISHNAN,
METHALA VILLAGE, DESOM, KODUNGALLUR TALUK.

2. NINEESH, S/O. -DO- -DO-.

3. NEENA, D/O. -DO- -DO-.

4. NIJITH, S/O. -DO- -DO-.

BY ADV. SRI.N.P.SAMUEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 30016/03)

PETITIONER'S EXTS.:

EXT.P1: PHOTOSTAT COPY OF THE APPLICATION FILED BY THE PETITIONER DATED 19.9.2001.

EXT.P2: PHOTOSTAT COPY OF THE COUNTER FILED BY THE RESPONDENTS DATED 5.11.2001.

EXT.P3: PHOTOSTAT COPY OF THE ORDER IN I.A.3089/01 IN O.S.271/98 DATED 4.7.2003.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.30016 of 2003

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Dated: 7th August, 2007

JUDGMENT

Ext.P3 order of the learned Subordinate Judge allowing an application for amendment of plaint only in part is under challenge in this Writ Petition under Article 227 of the Constitution initiated by the plaintiff. Ext.P1 is the amendment application. Under that application three amendments were sought for. The first amendment sought for was incorporation of an additional paragraph 8(a) after para 8 of the plaint. The 2nd amendment was to have the 9th para in the plaint substituted by a new paragraph and the third amendment was an amendment of the relief portion so that the same will conform to the proposed new para 9. The learned Subordinate Judge rightly found that the amendment to the extent it sought for incorporation of additional para 8(a) was only by way of amplification of pleadings already existing and allowed the application to that extent. But as regards the other two amendments sought for, the learned Subordinate Judge thought that the plaintiff is seeking a decree of cancellation of a document which according to the petitioner-plaintiff had been fraudulently got executed by the defendants in their favour. Thus taking the view that the said amendment may enable the plaintiff to by-pass the bar of limitation, the learned Subordinate

Judge declined the application to that extent.

2. Heard both sides.

3. Having regard to the rival submissions addressed before me, I am of the view that the learned Subordinate Judge could have allowed the application in full ensuring that his order does not cause any prejudice to the respondents. Accordingly, setting aside the impugned order, I allow the amendment application in full but clarifying that the order of amendment to the extent it relates to the substitution of new paragraph No.9 and allows amendment of the relief portion will become operative only with effect from the date of the amendment application and not earlier. The respondents are permitted to raise the bar of limitation through the additional written statement which may be filed and the issue of limitation will be tried by the learned Subordinate Judge along with the other issues in the suit. The observations and the findings of the learned Subordinate Judge in the impugned order that the new relief sought for is barred by limitation are vacated.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**